

#### Members

Sen. Vi Simpson, Chairperson  
Sen. Kent Adams  
Sen. Glenn Howard  
Rep. David Wolkins  
Michael Frey  
Patrick Bennet  
Greg Quartucci  
Randy Edgemon  
Vince Griffin  
Michael Sandefur  
Dan Willard  
David Hatchett  
Larry Smith  
Tim Method  
Travis Worl  
Bill Beranek  
Bill Hayden  
Michael Carnahan  
Cliff Duggan  
Tim Maloney  
Michael Brown  
David Lamm  
Rae Schnapp  
Tanya Galbraith  
Alice Schloss



## WETLANDS SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Timothy Tyler, Attorney for the Council

Authority: P.L. 248-1996 (SEA 138)

### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 19, 2000  
**Meeting Time:** 1:10 p.m.  
**Meeting Place:** State House, 200 W. Washington St.,  
House Chambers  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 4

**Members Present:** Sen. Vi Simpson, Chair; Sen. Glenn Howard, Rep. David Wolkins, and Randy Edgemon.

**Members Absent:** Sen. Kent Adams, Rep. Ron Herrell, Rep. Richard Mangus, Michael Carnahan, and Alice Schloss.

**Call to Order.** Sen. Vi Simpson, Chair of the Wetlands Subcommittee, called the meeting to order. Sen. Simpson explained the purpose of the meeting which was to discuss the costs and benefits of regulating impacts on wetlands.

**Changes in the Proposed Rule Regulating Impacts on Wetlands.** Matt Rueff, Assistant Commissioner, Office of Water Management, Indiana Department of Environmental Management (IDEM), indicated that two significant changes to the proposed rules have occurred. First, with respect to Tier II wetlands, references to endangered species have been removed. However, IDEM considers endangered species for any Section 401 water quality certification. The change will mean that the occurrence of an endangered species will not automatically result in the designation of the wetland as a Tier II wetland. Second, language allowing the IDEM Commissioner to require up-front mitigation in the

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

case of a Tier I wetland has been removed. Other suggested changes are also being considered.

**IDEM's Determination of Fiscal Impacts on Rules.** Nancy King, Office of Legal Counsel, Chief of Rules Section, IDEM, provided an overview of IDEM's process in determining fiscal impacts on proposed rules. If the agency determines that the proposed rule will result in an impact of \$500,000 or more on regulated entities, the agency must provide sufficient information to Legislative Services Agency (LSA) to allow LSA to complete a fiscal analysis. The statute provides that the board considering the adoption of the rule will have access to the fiscal analysis at both the preliminary and the final adoption hearings. In determining the fiscal impact, the agency must consider the cost of compliance with the rule. The statute does not indicate over what time period the fiscal impact must cover. If the rule reiterates requirements already in statute, already in program, or already required by federal law, the agency would not consider the rule as having an additional fiscal impact. Also, the mere adoption of a standard without additional entity specific or technology specific requirements does not result in a fiscal impact. This practice mirrors the federal government's practice. The agency does not consider agency costs in defending a permit decision. Litigation and enforcement costs are also not considered. These costs are costs associated with noncompliance with the rule which they do not consider.

IDEM contacts the regulated entities to obtain information on the impact. Most rules have a seven-year life span, and IDEM generally considers costs over the seven-year life of the rule. IDEM provides the information as well as the sources to LSA. If entities disagree with IDEM's assessment, they may provide additional information to IDEM for consideration. Entities can also provide LSA with additional information. IDEM considers fiscal impacts that are positive as well as negative.

**Andrew Pelloso, Senior Environmental Manager, Office of Water, IDEM,** distributed a memorandum pertaining to proposed changes to the draft wetland rule. (See Exhibit 1.) He noted that the adoption of a standard is not going to cause a fiscal impact. Based on requirements of the proposed rule, regulatory reforms that IDEM has adopted over the past two years, discussions with work group members, and comments received during the comment period, IDEM determined that the rule would not require a fiscal impact. Mitigation requirements reflected in the proposed rule are the same mitigation requirements that IDEM has required from applicants during the past 12 years in the implementation of the program. IDEM is not adopting different procedures.

**Public Comments.** In response to a question from **Melanie Darke, Indiana Department of Commerce,** Mr. Pelloso explained that the Department of Natural Resources (DNR) estimates that the rule could impact 5,000 acres of Tier II wetlands, far less than 1% of the total wetland acreage in the state, which equals 813,000 acres in a state that is 23 million acres in size. Of the 5,000 acres that the rule may impact, approximately one-third of the wetlands are currently under protection through private or public ownership. The DNR assessment is based on 25 years of assessing wetlands throughout the state.

**Fred Andes, Barnes & Thornburg,** expressed concerns that a great portion of Northwest Indiana would be affected. Mr. Pelloso noted that the DNR estimates that dunes/swales pre-settlement was 27,000 acres, which is not a large number. Currently, 1,200 acres exist of which 400 acres are in protection much of which is in the Dunes National Lakeshore. Most of the dunes/swales are in large sections, suggesting that few areas would be affected. He expressed his concerns that IDEM is making the policy choices as to what areas should be developed.

**Dr. Dan Willard, retired professor, Indiana University, School of Public and Environmental Affairs,** related the following with respect to economic benefits of wetlands. Thomas Jefferson wrote in the Northwest Treaty Ordinance that water was in the public trust forever. Public service benefits do not include those benefits that accrue to a user who owns or modifies land for some particular purpose, be it agricultural or for development. Public service benefits include wildlife values and water quality values.

Researchers in Georgia found the value per acre for a series of wetlands to equal approximately \$50,000 per acre. Developers scoffed at the value and indicated that they would be delighted to sell an acre for \$50,000. Subsequently, much of the land has been sold for wetland preservation and mitigation at \$150,000 per acre. Researchers at the University of Michigan found that 25 to 35 acres of wetland are about the equivalent of a water treatment plant valued at \$1.5 million, or about \$50,000 an acre.

The National Academy of Science conducted studies in 1993 on flood zones in Mississippi. The studies considered the replacement of six million acres of wetlands and what those acres would have done to reduce the damage caused by the floods. Damages were estimated at between \$12 billion and \$20 billion. Six million acres of wetlands could result in a saving of \$2,000 per acre every year forever. The market value of the acreage is about \$2,000.

A wetland mitigation project in Florida is restoring land at about \$20,000 per acre. Opening bids to purchase acreage for mitigation have started at \$80,000 to \$90,000 per acre. In Maryland, a series of studies tried to calculate the public value of wetlands. The value of the wetlands ran about \$52,000 an acre. Studies in Louisiana, Maryland, and Missouri indicate the functional value of wetlands at \$5,000 per acre per year. Louisiana has received \$3 billion for wetland restoration. Florida has received \$8 billion for wetland restoration. Wetlands have two sources of value: market value and the public coffers used to replace the wetlands.

Some wetlands, such as peat bogs, are priceless, which is not the same as valueless. Part of the value of wetlands can not be couched in terms of dollars. The main value of wetlands considered in the public trust include water quality, flood control, and wildlife habitat.

**Jay Poe, Huntington County Surveyor**, expressed his concerns that the fiscal impact has to be over \$500,000 because the impact is annual in perpetuity. If one wetland cost \$500 per year and is maintained in perpetuity, the cost will eventually exceed the threshold. With respect to work on regulated drains, from a county surveyor's perspective, if surveyors have a Tier II wetland that they have to mitigate, they are required to have public hearing according to the drainage code (IC 36-9-27). At the public hearing, they have a defined cost. They are not allowed to exceed the defined cost by more than 10%. They have to assess that cost to landowners for the drainage they receive. If they have to mitigate in advance, they have no way of funding the mitigation. On the other hand, state law requires them to remove obstruction even if they are in a wetland.

With respect to proposed IAC 17-4-3, any project a surveyor does is typically over the length threshold which would require them to mitigate the project. The law requires surveyors to remove obstruction within ten days; however, IDEM is allowed one year to issue the permit.

**Patrick Bennett, Indiana Manufacturers' Association**, provided a handout pertaining to the economic impact of wetland projects. (See Exhibit 2.)

Sen. Simpson asked if it was a legitimate function of state government to have public policy to encourage corporations to build on brownfields as opposed to wetlands or greenfields and, therefore, to use regulation, tax policy, and statute to encourage compliance with that public policy. Mr. Bennett agreed and indicated that his association supports incentives to use brownfields.

Randy Edgemon, EQSC member, noted that it's the government's role to protect the public trust.

**Melanie Darke, Indiana Department of Commerce**, explained the Department's policy to allow local governments to decide where development should occur. There is currently no state policy that encourages development in certain areas.

**Jim Davis, Waste Management**, explained his experience with the cost of wetland mitigation project to

mitigate about two acres of wetlands. The project cost approximately \$85,000 in 1997. Since that time they have spent about \$20,000 in follow-up inspections and repairs. The project was initially started with the engineering work in late 1994 and it has just been completed in 2000. The mitigation ratio was one-to-one. He indicated that the mitigation schedule in the proposed rule is different from existing standards.

**Mike Sandefur, Vectron Corporation**, described an instance wherein a company wanted to locate in southern Indiana, but located elsewhere because of state regulations pertaining to wetland mitigation. He indicated that the proposed rules would impose the same impediments that the company he described faced.

**Rick Wajda, Indiana Builders Association**, addressed the subcommittee regarding the economic impact of the proposed wetland rule. (See Exhibit 3.)

**Sandy Wilmore, Save the Dunes**, noted that the in perpetuity clause that requires a conservation easement or a deed restriction on a property does not mean that the applicant has to spend thousands of dollars to manage the property in perpetuity. Save the Dunes believes that the proposed rule will expedite decision-making and improve wetland protection to ensure sustainable development and enhance the quality of life for Indiana residents. Wetlands benefit everyone by detoxifying polluted waters and reducing flood frequency and intensity. They also replenish aquifers, ground water recharge, stabilize shorelines, and provide numerous recreational and educational opportunities. Numerous plants and animals depend on wetlands. Without wetlands society pays higher costs for waste water treatment, flood damage, and dredging expenses. The rules will not block economic development but facilitate responsible development.

**Paul Berebitsky, Indiana Constructors, Inc.**, focused on the impact of the regulation on public improvements. If a public body determines that a public improvement such as a road is needed in a place that would impact a wetland, the citizens may face costs associated with the extra time and effort involved in up-front mitigation. Additionally, the citizens would have the cost of using inadequate facilities during the time that the mitigation was being established and approved. If IDEM determines that a wetland should be avoided, additional road may need to be constructed in order to circumvent the wetland. This addition may result in more gas to travel the additional distance which would pollute the air. The addition may also require more time to travel.

**Next Meeting Date.** The final subcommittee meeting is scheduled as follows:

<u>Date</u>	<u>Time</u>	<u>Topic</u>	<u>Location</u>
Oct 30	1:30 p.m.	Recommendations	Training Room 8, Indiana Government Center South, 302 W. Washington St.

**Adjournment.** The meeting was adjourned at approximately 3:45 p.m..